

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ROBERT P. STEINMETZ,	:	
	:	
Appellant	:	No. 1827 EDA 2012

Appeal from the Judgment of Sentence entered on August 31, 2011  
in the Court of Common Pleas of Monroe County,  
Criminal Division, No. CP-45-CR-0000029-2010

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED MAY 15, 2013**

Robert P. Steinmetz (“Steinmetz”) appeals from the judgment of sentence imposed after he pled guilty to homicide by vehicle and two counts of driving under the influence. **See** 75 Pa.C.S.A. §§ 3732(a); 3802(a)(1); 3802(c). We dismiss the appeal.

The trial court set forth the relevant history of this case as follows:

There are two separate cases that arise from two separate incidents. On August 31, 2011, [Steinmetz] pleaded guilty and was sentenced that same day in both cases. In the first case (29 CR 2010), [Steinmetz] pleaded guilty to (1) DUI: Controlled Substance; and (2) Homicide by Vehicle (relating to DUI) from an incident that occurred on May 11, 2009[,] resulting in the death of Dale Dennis. While [Steinmetz] was out on bail in that case, he was involved in a second accident while under the influence of alcohol and fled the scene of the second accident. In the second case (2564 CR 2010), [Steinmetz] pleaded guilty to DUI: General Impairment. [Steinmetz] was immediately sentenced in both cases to a total aggregate period of incarceration in a state correctional institution of not less than

forty-eight (48) months nor more than ninety-six (96) months. No timely appeal followed.

On January 13, 2012, [Steinmetz] filed a [Post Conviction Relief Act ("PCRA")] Petition alleging ineffective assistance of counsel. A hearing was held on March 2, 2012[,] and on May 2, 2012, [the PCRA court] filed an opinion granting [Steinmetz's] PCRA Petition and reinstating his appellate rights *nunc pro tunc* [and allowing Steinmetz ten days to file a post-sentence motion].

Trial Court Opinion, 8/27/12, at 1-2.

Thereafter, Steinmetz filed a Motion to reconsider his sentences due to his significant medical issues. Following a hearing, the trial court denied the Motion. Steinmetz then filed a timely Notice of appeal. The trial court ordered Steinmetz to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Steinmetz filed a timely Concise Statement, after which the trial court issued an Opinion.

On appeal, Steinmetz raises the following question for our review: "Whether the [trial] court was in error and abused its discretion in sentencing [Steinmetz] to an excessive sentence to be served in a state correctional facility without considering [Steinmetz's] significant medical issues as a mitigating factor?" Brief for Appellant at 4.

Steinmetz challenges the discretionary aspects of his sentence.

An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:

[W]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence,

**see** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

\* \* \*

The determination of what constitutes a substantial question must be evaluated on a case-by-case basis. A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process.

***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010)  
(quotation marks and some citations omitted).

Here, Steinmetz filed a timely Notice of appeal after his appeal rights were reinstated *nunc pro tunc*, raised his claim in a Motion to reconsider the sentence, and included a Rule 2119(f) Statement in his brief. Steinmetz contends that his standard range sentence was excessive because the trial court did not consider certain mitigating factors, specifically, his medical issues. Brief for Appellant at 5-6. Steinmetz's contention does not raise a substantial question. ***See Commonwealth v. Rhoades***, 8 A.3d 912, 918-19 (Pa. Super. 2010) (stating that "an allegation that the sentencing court failed to consider mitigating factors generally does not raise a substantial

question for our review.”).<sup>1</sup> Moreover, the trial court had the benefit of a pre-sentence investigation report, which detailed Steinmetz’s medical issues. **See** N.T., 8/31/11, at 13-14; **see also Rhoades**, 8 A.3d at 919 (stating that where the trial court had the benefit of a pre-sentence investigation report, “we can assume the [] court was aware of relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.”). Accordingly, we are precluded from addressing Steinmetz’s challenge to the discretionary aspects of his sentence on this basis. **See Rhoades**, 8 A.3d at 919 (wherein this Court concluded that it could not address appellant’s discretionary aspects of sentencing claim that the trial court did not consider mitigating factors in imposing a standard range sentence, as a substantial question was not raised and the trial court had the benefit of a pre-sentence investigation report).

Appeal dismissed.

Judgment Entered.



Prothonotary

Date: 5/15/2013

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<sup>1</sup> We note that this Court has held that a substantial question exists when a sentencing court imposed a sentence in the *aggravated range* without considering mitigating factors. **See Commonwealth v. Felmlee**, 828 A.2d 1105, 1107 (Pa. Super. 2003). However, Steinmetz acknowledges that he was not sentenced in the aggravated range. **See** Brief for Appellant at 9 (stating that the trial court imposed a standard range sentence).

J-S08034-13